

Fuentes v BSC Hous. Co. Inc.

2025 NY Slip Op 35024(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 534548/2022

Judge: Devin P. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**Supreme Court of the State of New York
County of Kings**

Index Number 534548/2022
Seqs. 001, 002

Part LL1M

EDWIN FUENTES,

DECISION/ORDER

Plaintiff,

against

BSC HOUSING COMPANY INC., BSC OWNER LLC,
BROOKSVILLE COMPANY, LLC, AND TWIN PINES
MANAGEMENT LLC,

Defendants.

BSC HOUSING COMPANY INC., BSC OWNER LLC,
BROOKSVILLE COMPANY, LLC, AND TWIN PINES
MANAGEMENT LLC,

Third-Party Plaintiffs,

against

PNA CONTRACTING CORP.,

Third-Party Defendant.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 36-75.

Based on the foregoing papers, plaintiff's motion for summary judgment against BSC Housing Company Inc. and BSC Owner LLC (BSC defendants or BSC) (Seq. 001) and defendants/third-party plaintiff's motion for summary judgment (Seq. 002) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on September 27, 2022, when he fell from an unsecured aluminum extension ladder. It is undisputed that the BSC defendants owned the premises. PNA Contracting Corp. (PNA) was retained as the general contractor. Brooksville Company, LLC (Brooksville) was the real estate developer that prepared the scope of contract for work to be performed at the subject premises (Ivan Spencer, representative of Brooksville, EBT at 10). The Workers Compensation Board found that plaintiff was employed by non-party Roca Construction NY Corp. (Roca). Plaintiff discontinued his claims against defendant Twin Pines Management LLC (Twin Pines) with prejudice via a stipulation on July 9, 2025; in turn, defendants withdrew as moot that portion of their motion seeking summary judgment on plaintiff's claims against Twin Pines.

Plaintiff testified as follows: PNA provided him and his co-workers with equipment, including ladders (Fuentes EBT at 41). The plaintiff accessed the scaffold platform on top of a pipe scaffold using an extension ladder (*id.*). Plaintiff was provided with a safety harness; however, there was no anchorage point for him to tie off to while climbing the ladder, so he kept his harness on top of the scaffold platform (*id.* at 46). On the date of his accident, plaintiff was carrying a bag of cement up the extension ladder to reach the scaffold platform when the ladder "flipped" to the left, causing plaintiff to fall backwards and onto his left side (*id.* at 59, 61). The ladder moved because it was not properly secured or tied off (*id.* at 64, 66).

Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100

NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Labor Law § 240 (1)

Labor Law § 240 (1) imposes a non-delegable duty on owners and general contractors to provide safety devices necessary to protect workers from gravity-related risks, including falling from an elevated work surface (*McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 374 [2011]). A plaintiff can obtain summary judgment even when he is the sole witness to the accident if his testimony resolves all questions of fact and is unrebutted by other admissible evidence (*see Cardenas v 111-127 Cabrini Apartments Corp.*, 145 AD3d 955, 957 [2d Dept 2016]).

Plaintiff's testimony that he was obliged to work on an unsecured ladder without proper fall protection equipment is sufficient to make out his prima facie entitlement to summary judgment. In opposition, BSC defendants merely contends that it was not actively negligent, but does not substantively oppose their liability under Labor Law § 240 (1). The owner is statutorily required to ensure an individual performing qualified work has proper safety devices, including a properly secured ladder and personal protective equipment (*Blake v Neighborhood Hous. Services of New York City, Inc.*, 1 NY3d 280, 287 [2003]). The owner can be liable even if it did not exercise supervision or control the work (*id.*).

Third-party defendant PNA's opposition to plaintiff's motion is also unavailing. There is no evidence that the plaintiff provided or even constructed the subject ladder. Plaintiff cannot, therefore, have been the sole proximate cause of his accident (*see e.g. Orellana v 7 West 34th Street, LLC*, 173 AD3d 886 [2d Dept 2019]). Additionally, plaintiff has established the existence of a statutory violation, and that the violation was a proximate cause of his accident; contrary to

PNA's arguments, he does not need to further explain what caused the ladder to move (*see e.g. Melchor v Singh*, 90 AD3d 866, 868–870 [2d Dept 2011]).

Therefore, plaintiff's motion for summary judgment on his Labor Law § 240 (1) claim against the BSC defendants is granted.

Contractual Indemnification

The right to contractual indemnification is established by the "specific language of the contract" (*Dos Santos v Power Auth. of State of New York*, 85 AD3d 718, 722 [2d Dept 2011]; quoting *George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]). "In addition, a party seeking contractual indemnification must prove itself free from negligence, because to the extent its negligence contributed to the accident, it cannot be indemnified therefor" (*Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]). A party must also show itself free from negligence to prevail on summary judgment for a common-law indemnification claim (*Poalacin v Mall Properties, Inc.*, 155 AD3d 900, 909 [2d Dept 2017]).

Here, it is undisputed that PNA's sub-contract with BSC requires it to indemnify BSC and its "agents and employees" for damages arising out of, in essence, the performance of PNA's contract with BSC. PNA does not substantively oppose the contention that Twin Pines and Brooksville are proper indemnitees under the contract. Instead, PNA argues that the Workers' Compensation Board determination that plaintiff was not employed by PNA undermines movants' claim that the incident arose out of PNA's performance of its contract. However, that argument is belied by plaintiff's testimony that the ladder he was using was set up by PNA employees and his belief that he was receiving instructions from PNA representatives. Furthermore, Andrew Anagnostidis testified on behalf of PNA that it was retained as the general contractor for the project (Anagnostidis EBT at 50). Since it is clear from the record that the

incident arose of our work being performed in connection with PNA's contract, and since PNA has not raised an issue of fact as to the movants' active negligence, the movants' motion for summary judgment on their contractual indemnification claim against PNA is granted.

Conclusion

Plaintiff's motion for summary judgment against the BSC defendants (Seq. 001) is granted. (The plaintiff did not move against defendant Brookville.)

Third-party plaintiffs' motion for summary judgment (Seq. 002) is granted with respect to their contractual indemnification claim against PNA; the portion of the motion seeking dismissal of plaintiff's claims against Twin Pines is withdrawn as moot.

This constitutes the decision of the court.

December 11, 2025
DATE



DEVIN P. COHEN
Justice of the Supreme Court